

Served: August 19, 1999



UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

Issued by the Department of Transportation  
on the 19th day of August, 1999

Notice of

**PAN AMERICAN AIRWAYS CORP.**

of intent to resume interstate scheduled operations under 49 U.S.C.  
41102 pursuant to 14 CFR 204.7

Docket OST-99-5945

Notice of

**CARNIVAL AIR LINES, INC.**  
**d/b/a PAN AMERICAN AIRWAYS CORP.**

of intent to resume interstate charter operations and application for  
a waiver of the 45-day advance notice requirement of 14 CFR 204.7

Docket OST-98-3570

Joint Application of

**PAN AM CORPORATION**  
**and**  
**CARNIVAL AIR LINES, INC.**

for approval of a *de facto* transfer of route authority under 49 U.S.C.  
41105 and registration of new name under 14 CFR Part 215

Docket OST-97-2787

Application of

**PAN AMERICAN WORLD AIRWAYS, INC.**

for a certificate of public convenience and necessity authorizing  
foreign scheduled air transportation of persons, property and mail  
(Dominican Republic and the Bahamas)

Docket OST-97-2918

Application of

**PAN AMERICAN AIRWAYS CORP.**

for renewal of an exemption under 49 U.S.C. 41109 (Ft.  
Lauderdale-Caracas)

Docket OST-96-1166

ORDER MAKING FITNESS DETERMINATION, REISSUING AND

## REVOKING CERTIFICATES, CONFIRMING GRANT OF WAIVER, AND DISMISSING APPLICATIONS

### Summary

By this order, we (1) find Pan American Airways Corp. fit, willing, and able to resume interstate scheduled air transportation operations under its certificate authority; (2) reissue to it the certificate held by Carnival Air Lines, Inc. d/b/a Pan American Airways Corp.; (3) revoke on grounds of dormancy the certificate reissued to Pan American World Airways, Inc. ("PAWA") by Order 96-10-33 to engage in interstate scheduled passenger operations, and the exemption authority issued to PAWA by Order 98-1-23 to serve Santo Domingo, Dominican Republic; (4) confirm staff actions of February 27 and March 3, 1998, in Docket OST-98-3570 granting Carnival waivers of 14 CFR 204.7 to the extent necessary to permit it to engage in limited charter operations; (5) dismiss the joint application of Pan American Corporation ("PAC") and Carnival in Docket OST-97-2787 for approval of a *de facto* transfer of route authority; (6) dismiss the application of PAWA in Docket OST-97-2918 for a certificate to engage in foreign scheduled air transportation of persons, property and mail (Dominican Republic and the Bahamas), for which it had been issued exemption authority; (7) dismiss the application of Pan American Airways Corp. for renewal of exemption authority previously issued to Carnival (Ft. Lauderdale-Caracas) in Docket OST-96-1166, and revoke that exemption and the exemption granted to Carnival by Order 97-9-29 to serve Port-au-Prince, Haiti; and (8) dismiss the motions of Mr. Richard C. Bartel, PAC, and Carnival to file otherwise unauthorized documents in Docket OST-97-2787.

### Background

Carnival, a Florida corporation located in Ft. Lauderdale, was issued a certificate to engage in interstate scheduled passenger air transportation by Order 90-12-38 on December 17, 1990.<sup>1</sup> Under this authority, the carrier provided scheduled and charter flights in the U.S. and the Caribbean with up to 21 leased A-300s, B-737s, and B-727s.

By Order 96-9-25, served September 19, 1996, PAWA, a Florida corporation located in Miami, was issued a certificate authorizing it to engage in interstate scheduled passenger air transportation.<sup>2</sup> The carrier, which is wholly owned by PAC, provided scheduled air service with Airbus A300 aircraft at Miami, New York, Los Angeles, and San Francisco.

In March 1997, PAC notified the Department of its intention to acquire Carnival. In such an event, two air carriers with international route authority would be commonly controlled. Therefore, in accordance

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<sup>1</sup> Carnival's certificate was issued originally to Pacific Interstate Airlines, Inc., by Order 84-11-88 on November 26, 1984. Pacific Interstate's stock was acquired in October 1988 by Hamilton Holding Company, a Florida corporation wholly owned by Mr. Ted Arison. Hamilton Holding established a subsidiary, Carnival Air Lines, Inc., to which Pacific Interstate's certificate authority was transferred (Order 89-10-10, October 4, 1989), and to which a certificate was awarded authorizing foreign scheduled air transportation between the United States and the Bahamas (Route 574) (Order 89-10-35, October 20, 1989). These two certificates were reissued on December 17, 1990, by Order 90-12-38. Carnival's foreign certificate, amended by Order 93-2-34, authorized the carrier to serve additional foreign points in the Dominican Republic and Guyana. Carnival also holds foreign scheduled passenger exemption authority to serve Port-au-Prince, Haiti (Order 97-9-29) and Caracas, Venezuela (Order 97-6-26). The carrier filed a timely application for renewal of the Caracas exemption authority (Docket OST-96-1166). All other exemption authority and authorizations to code-share with foreign air carriers have expired by their own terms.

<sup>2</sup> The carrier's authority was originally issued in the name Pan American Airways, Inc. By Order 96-10-33, served October 29, 1996, PAWA's certificate was reissued in the name Pan American World Airways, Inc. PAWA also holds exemption authority to serve New York-Santo Domingo, Dominican Republic (Order 98-1-23, served January 29, 1998). All other exemption authority and authorizations to code-share with foreign air carriers have expired by their own terms.

with the Department's policy, PAC and Carnival jointly filed an application on August 6, 1997, in Docket OST-97-2787, seeking approval under section 41105 of Title 49 of the United States Code ("the Statute") of the *de facto* transfer of Carnival's foreign route authority to Carnival under the ownership of PAC.<sup>3</sup>

On September 30, 1997, PAC and Carnival filed a supplement to the transfer application, declaring that the acquisition had been approved by PAC's shareholders and was consummated on September 26. Noting that a condition to the closing was their agreement to discontinue using the "Carnival" name and to have that name removed from Carnival's economic authority, the applicants requested that, when ruling on the *de facto* transfer application, the Department reissue Carnival's certificate and exemption authority in the name "Pan American Airways Corp." PAC and Carnival further sought to register the new name as a Carnival trade name until the Department had completed its review of PAWA's and Carnival's continuing fitness under common ownership. By a notice issued on October 1, 1997, we acknowledged Carnival's registration of the trade name "Pan American Airways Corp."<sup>4</sup> By this order, we are reissuing Carnival's authority in the name Pan American Airways Corp. (Hereafter in this order, except when referring to events that occurred prior to its acquisition by PAC, Carnival will be referred to as "Pan Am.")

Following the acquisition, Pan Am and PAWA together provided, under a code-share arrangement, up to 50 daily scheduled departures from sixteen points in the Northeast U.S., Florida, California, and the Caribbean, in addition to commercial and military passenger charters, and cargo flights.

On February 4, 1998, due to financial distress, PAWA ceased conducting air transportation operations.<sup>5</sup> On February 26, 1998, PAC notified the Department that Pan Am and PAWA were, on that date, filing petitions under Chapter 11 of the U.S. Bankruptcy Code<sup>6</sup> and that Pan Am would cease operations on the following day, February 27. In light of Pan Am's shutdown, we sent the carrier a notice of suspension of authority on February 27 and reminded Pan Am that, under section 204.7 of our rules, before operations could be reinstituted, it must file a notice of intent to do so at least 45 days prior to the planned resumption

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<sup>3</sup> In addition, the applicants jointly filed an application for an exemption from section 41105 to the extent necessary to allow PAC and Carnival to close on the acquisition transaction pending our action on the *de facto* transfer request. By Order 97-9-3, issued on September 4, 1997 (Docket OST-97-2786), we granted the exemption, on condition that PAWA and Carnival remain separate entities until our decision on the *de facto* transfer had been made.

<sup>4</sup> Also on October 7 (as amended on October 8), Mr. Richard C. Bartel, a PAC shareholder, submitted a Motion to File an Otherwise Unauthorized Document and an Answer in opposition to PAC's and Carnival's applications for an exemption and for the *de facto* transfer. On October 17, PAC and Carnival filed a Contingent Motion for Leave to File and a Reply to Amended Opposition of Richard C. Bartel. On October 24, Mr. Bartel filed a Contingent Initial Reply to PAWA's and Carnival's October 17 Reply, which he supplemented on November 18. Since we are dismissing PAC and Carnival's application for a *de facto* transfer, we are also dismissing as moot the motions of Mr. Bartel, PAC and Carnival.

<sup>5</sup> We notified PAWA by letter dated February 25, 1998, that, in accordance with section 204.7 of our rules, its economic authority was automatically suspended as of February 4, and that, before operations could be reinstituted, it must file a notice of intent to do so and have its fitness redetermined. On April 30, 1998, PAWA surrendered its FAA Certificate.

<sup>6</sup> Pan Am's and PAWA's Chapter 11 proceedings were filed in the U.S. Bankruptcy Court for the Southern District of Florida, Miami Division. On March 13, 1998, Chapter 11 filings were also made by PAC and eight affiliated companies -- Pan American Properties, Inc. (Florida), EAL Asset Company No. 1, Inc. (Florida), EAL Asset Company No. 2, Inc. (Florida), Pan American Airbridge Holdings, Inc. (Florida) (then owner of 30 percent of the stock of the Ft. Lauderdale-based commuter air carrier Flying Boat, Inc. d/b/a Pan Am Air Bridge), Pan American World Services, Inc. (Florida), PAWA Holdings, Inc. (Florida), Pan American World Airways, Inc. (Delaware) (owner of the Pan Am intellectual property, e.g., the Pan Am name and logo), and Padre, Inc. (Florida). The bankruptcy estates of all of these companies ("the Debtors") (except Padre, the liquidating debtor) were consolidated by the Court on April 15 under Case No. 98-11618-BKC-AJC.

and undergo a fitness redetermination, unless the Department otherwise authorized it to resume operations.

Late on February 27, Pan Am notified the Department that it had several opportunities to perform charter flights beginning on February 28, and orally requested a waiver of the 45-day advance notice provision of section 204.7 to the extent necessary to allow it to perform such charter flights. After determining that the FAA had no objection to such operations, the staff orally granted Pan Am the requested waiver. On March 2, Pan Am formally filed in Docket OST-98-3570 a notice of intent to resume charter operations, and a request for a waiver of the 45-day advance notice provisions of section 204.7. On March 3, Pan Am orally requested permission to perform additional charter flights during the coming week, which the staff orally granted.

On May 20, 1998, the Debtors filed with the Bankruptcy Court a Plan of Reorganization whereby Messrs. Timothy Mellon and David A. Fink, the principals of Guilford Transportation Industries, Inc. ("Guilford"), of Nashua, New Hampshire, would form a new company, Pan American Airlines, Inc. ("PAL") a Florida corporation, to acquire stock and assets of certain of the Debtors for a total of \$30.25 million.<sup>7</sup> Specifically, PAL would acquire 100 percent of new securities of PAC and certain affiliated companies (PAWA, Pan Am, Pan American World Airways, Inc. (Delaware), and Pan American Airbridge Holdings, Inc.<sup>8</sup>), their operating authorities, and two B-727 and one B-737 aircraft, with parts and equipment, owned and operated by Pan Am. The Court approved the Plan and released the Debtors from bankruptcy on June 29, 1998.<sup>9</sup>

On June 30, 1998, PAL submitted information on the acquisition, the new owners and managers, proposed operations, and other evidence of Pan Am's fitness to continue its certificated charter operations as a result of these substantial changes.<sup>10</sup> On July 9, 1999, in Docket OST-99-5945, Pan Am filed a notice of intent to resume interstate scheduled operations along with additional information on its fitness to do so.

## Answers

On July 20, 1999, an Answer was filed in Docket OST-99-5945 by Richard C. Bartel, individually and as Treasurer and majority controlling shareholder of Eclipse Holdings, Inc. Mr. Bartel states that he purchased the "Pan Am" trademarks and goodwill at an auction on December 2, 1993, in the bankruptcy proceeding of the original Pan American World Airways; and that he subsequently sold certain of these assets to Cobb Partners, Inc., which assigned its interests in the assets to Pan American World Airways, Inc. (Delaware) ("Pan Am (DE)"). Mr. Bartel claims that the assets were sold to Cobb in exchange for Eclipse's use of the Pan Am trademarks in worldwide charter operations and for other considerations; and that this matter is the subject of pending litigation in the U.S. District Court for the Southern District of New York.

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<sup>7</sup> Of this amount, \$15.2 million would be used to purchase assets, \$9.3 million would be used to pay administrative expenses and claims under the plan of reorganization, and \$5 million would provide working capital for Pan Am, the surviving reorganized airline. Also included would be a \$750,000 loan to the Liquidating Debtor secured by its assets.

<sup>8</sup> Through Pan American Airbridge Holdings, PAC owned stock representing a 30 percent interest in Flying Boat, Inc. d/b/a Chalks International Airlines and d/b/a Pan American Airbridge, a commuter air carrier located in Ft. Lauderdale. Following the PAL acquisition, PAC returned its Flying Boat stock, and Flying Boat agreed to discontinue use of the Pan Am name and logo.

<sup>9</sup> The Department of Justice completed its review of the acquisition under the Hart-Scott-Rodino Act on June 26, 1998.

<sup>10</sup> The carrier provided additional information on October 28, 1998, and January 8, April 14, June 30, July 1, and July 6, 1999.

On July 21, Pan Am filed a motion for leave to file and a Reply to Mr. Bartel's Answer.<sup>11</sup> Pan Am states that Mr. Bartel's assertion that he purchased the Pan Am intellectual property has already been rejected by various courts, although the matter may still be subject to pending appeals; and that Mr. Bartel has not objected to the carrier's resumption of scheduled operations.

On July 30, Mr. Bartel and Eclipse Holdings filed a motion for leave to file an unauthorized document and a Surreply to Pan Am's July 21 Reply. Mr. Bartel states that his filing is for the purpose of correcting the record in Docket OST-99-5945 wherein the Pan Am intellectual property was listed as an asset on two PAL balance sheets attached as exhibits PA-104 and PA-106 to Pan Am's application in this proceeding, without a note explaining that title to the property is in dispute. Mr. Bartel also provided other evidence in support of Eclipse's claims to the Pan Am charter rights.

On July 30, Pan Am filed a motion for leave to file and a Further Reply to the Surreply of Mr. Bartel and Eclipse Holdings. Pan Am contends that the documents filed by Mr. Bartel do not contain any proof of his acquisition of and payment for the Pan Am intellectual property, and notes again that Mr. Bartel does not oppose its application to resume scheduled service.

Since Mr. Bartel has not suggested that Pan Am is not fit and that it should not be authorized to resume scheduled operations under its certificate authority, and since the matters discussed in Mr. Bartel's filings are not issues in any proceedings pending before the Department, we find that they are not relevant to our actions here.

After reviewing all of the documents filed and other information we have obtained, we conclude that Pan Am, under its new ownership, is fit to conduct its proposed certificated air transportation operations. By this order, we are also reissuing Carnival's interstate certificate in Pan Am's name; dismissing the *de facto* transfer application of PAC and Carnival, the foreign certificate application of PAWA, and the exemption renewal application of Pan Am; and revoking for dormancy PAWA's economic authority.

## FITNESS

### Ownership and Management

Mr. Timothy Mellon and Mr. David A. Fink, Chairman and President, respectively, of Guilford, serve in the same capacities with PAL and Pan Am. Mr. Mellon owns 94.2 percent of PAL's stock, and Mr. Fink owns 5.2 percent. PAL, in turn, owns 100 percent of the stock of PAC, the parent of Pan Am. The other two board members (who own the remaining 0.6 percent of PAL's stock) are Messrs. Richard S. Kelso and David Armstrong Fink, who is the son of Mr. David A. Fink.<sup>12</sup>

Messrs. Mellon and Fink, who have been business partners since 1976, formed Guilford in 1981. In that year, they acquired the Maine Central Railroad and, two years later, purchased the Boston and Maine Railroad and the Delaware and Hudson Railway. Today, the Guilford Railroad System consists of the Boston and Maine, the Maine Central, and the Springfield Terminal Railway Company. Guilford also operates a freight handling company, GMX.

Mr. H. Clay Faulkner, Jr. joined the company as Director of Operations in February 1999. Mr. Faulkner was employed as a pilot by Eastern Air Lines for 26 years. After that carrier's demise, he joined

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<sup>11</sup> We will grant Pan Am's July 21 motion as well as those of Mr. Bartel and Pan Am filed on July 30.

<sup>12</sup> Mr. Kelso, a member of the board of PAL, is Vice President of a Washington, DC, investment brokerage concern, Wheat First Butcher Singer. Mr. David Armstrong Fink is also a PAL director and serves as Executive Vice President of Guilford.

Carnival/Pan Am where he has served as a pilot and ground school and flight instructor. He holds an Airline Transport Pilot Certificate with a B-727 rating.

Mr. Richard C. Rogers, who was recently named Chief Pilot, has served Carnival/Pan Am as a pilot since 1988. He holds Airline Transport Pilot and Airframe and Powerplant Mechanic Certificates from the FAA, and has accumulated over 8,200 hours of flight time.

Mr. Donald L. Baxter was hired by Pan Am in February 1999 as its Director of Quality Assurance and was reassigned to the position of Director of Maintenance in May. Among the positions held during his 32-year career in aircraft maintenance are Manager of Hangar Bay Operations for Trans World Airlines; President and General Manager of A.R.C.H.E.R. Service Co., an FAA-certified repair station; Chief Inspector and Vice President of Maintenance and Technical Services for Buffalo Airways; and Director of Quality Assurance and Director of Maintenance for Vanguard Airlines. Mr. Baxter holds an Airframe and Powerplant Mechanic Certificate from the FAA.

At the time of the PAL acquisition of Carnival, Mr. Eduard Stalzer was named Director of Maintenance and was subsequently reassigned as Chief Inspector. During over 15 years of commercial aviation maintenance employment, Mr. Stalzer has worked as an aircraft mechanic with such carriers as Amerijet International, Florida West Airlines, and the original Midway Airlines, where he was also the quality assurance inspector. Most recently, Mr. Stalzer served as Director of Maintenance for Buffalo Airways and Fine Airlines. He holds an FAA-issued Airframe and Powerplant Mechanic Certificate.

Based on the experience and background of Pan Am's key personnel and the fact that they have been managing the carrier's ongoing operations,<sup>13</sup> we conclude that Pan Am will have the management skills and technical ability needed to continue conducting its certificated operations.<sup>14</sup>

### **Operating Plans and Financial Condition**

Pan Am, which relocated from Florida to a new operations and maintenance facility at Pease International Tradeport in Portsmouth, New Hampshire, presently has in service two owned and five leased B-727-200s, which the company uses primarily for ad hoc charter flights that it has been conducting since ceasing scheduled service in February 1998. In its application to resume scheduled operations, the carrier states that, in addition to its ongoing charter operations, it intends to use two of its 149-seat B-727-200 aircraft to provide one round-trip scheduled flight six days per week over a Portsmouth-Chicago/Gary-Orlando/Sanford-Portsmouth routing. Within two months of instituting this schedule, Pan Am plans to add two direct round-trip flights six days per week between Portsmouth and Orlando/Sanford and one such flight between Orlando/Sanford and San Juan, Puerto Rico.

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<sup>13</sup> Other key personnel who joined Pan Am following its acquisition by PAL are Mr. Michael A. Holmes, Senior Vice President-Finance and Chief Financial Officer, who is employed in the same position with Guilford; Mr. John R. Nadolny, Senior Vice President, General Counsel and Corporate Secretary, who is Senior Vice President and General Counsel of Guilford; Mr. Daniel C. Fortnam, Director of Marketing, who was previously Manager of Schedule Planning for KIWI International Airlines; Mr. Denis M. Kilroy, Director of Safety, who served as Air Division Chief of Safety with the U.S. Air Force and as the Boston Domicile Safety Representative while employed as a pilot with American Airlines; and Mr. Thomas J. Ostendorp, Managing Director of Technical Operations, who has seven years of experience in aviation maintenance management with such carriers as Air Wisconsin, Arrow Air, TriStar Airlines, and Fine Airlines. He holds an Airframe and Powerplant Mechanic Certificate issued by the FAA.

<sup>14</sup> The FAA also evaluates certain of the carrier's key personnel with respect to the minimum qualifications for those positions as prescribed in the Federal Aviation Regulations. The FAA's evaluation of these key personnel provides an added practical and in-person test of the skills and technical ability of these individuals.

Pan Am provided monthly traffic and expense forecasts, including unit cost data, for the first year of its reinstated scheduled operations. The carrier stated that its projections were based in part on the actual costs it has experienced in its own operations and in part on the experience of similarly situated low-cost new entrant carriers. Pan Am estimates that total scheduled operating costs during its first year will approximate \$15.7 million. In addition, the company anticipates incurring an additional \$194,300 for pre-operating expenses associated with station set-up, advertising, reservations systems, legal and consulting services, and FAA certification for scheduled operations. We have reviewed Pan Am's projections and find them to be reasonable. Based on this review, we conclude that Pan Am will need funds available to it of at least \$4,114,760.<sup>15</sup>

According to Form 41 data filed with the Department for the months of July 1998 through March 1999, Pan Am's charter operations resulted in net losses in six of those eight months since emerging from bankruptcy, which in the aggregate equaled a total net loss for that period of \$1.8 million on revenues of \$13.7 million. The carrier supplied for itself an unaudited balance sheet dated March 31, 1999, which reflected current assets of \$12.8 million, current liabilities of \$8.15 million, long-term debt in the form of a demand note held by Mr. Mellon for \$1.0 million, and stockholders' equity of \$27.5 million, including \$25.0 million in preferred stock and \$4.5 million in common stock reflecting the purchase price for PAC and its subsidiaries, and negative retained earnings totaling approximately \$2.0 million. Thus, as of March 31, Pan Am had working capital of \$4.65 million (and a current ratio of 1.57:1).

In view of Pan Am's positive working capital and equity positions and the financial support of its new owners, we conclude that the carrier has access to sufficient resources to reinstitute its proposed scheduled operations without posing an unwarranted risk to consumers or their funds.<sup>16</sup>

Our findings regarding Pan Am's fitness are based solely on our evaluation of its ability to conduct the proposed scheduled and charter operations with its current fleet of up to seven B-727 aircraft. The applicant did not discuss any expansion plans and we have not evaluated the carrier's fitness to conduct any such expanded operations. Therefore, we will reissue Pan Am's authority limited to the conduct of interstate scheduled and charter operations with no more than eight B-727 aircraft until it has provided evidence of its fitness to conduct expanded operations.

### **Compliance Disposition**

Pan Am's FAA's enforcement record indicates four open enforcement actions with potential civil penalties, plus two cases in which civil penalties have been assessed but not yet paid. Two of these cases involve alleged violations of maintenance and airworthiness regulations, one cites violations of hazardous materials handling regulations, and three charge violations of passenger security regulations. All of these violations occurred prior to the carrier's Chapter 11 filing; FAA records indicate that Pan Am has not been the subject of any enforcement actions involving possible civil penalties under its new ownership.

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<sup>15</sup> This amount is comprised of the projected \$194,300 in pre-operating costs plus \$3,920,459, which is approximately one-fourth of the applicant's projected total first-year scheduled operating costs of \$15,681,836. In evaluating an applicant's financial fitness, the Department generally asks that the company have available to it resources sufficient to cover all pre-operating costs plus a working capital reserve equal to the operating costs that would be incurred in three months of normal certificated operations. Because projected expenses during one or more of the first several months of service frequently do not include all costs of operations that will be incurred during a normal period of operations, it is our practice to base our three-month test on one quarter of the first year's operating cost forecast. In calculating available resources, projected revenues may not be used.

<sup>16</sup> In connection with Pan Am's intention to continue to engage in charter operations, passengers' funds are protected by charter payment escrow accounts as required by section 212.8 of our rules.

FAA safety records reveal that, over the past seven years, Carnival was involved in ten incidents and one accident, although no accidents have been recorded for almost four years, and no incidents for over a year. The accident, which occurred in September 1995, entailed a collision between an aircraft and a power unit during an attempt to push the aircraft back from the gate. Ground personnel were found to have been responsible for the mishap. No one was injured, although the aircraft sustained substantial damage.

The FAA states that all of the problems giving rise to the earlier enforcement actions have been corrected and that Pan Am's recent operations have been satisfactory in terms of compliance and safety. The FAA further states that Pan Am has not yet applied for authorization to conduct scheduled operations.

Our consumer records show that, in 1998, we received 53 complaints naming Carnival and 304 naming Pan Am. Nearly 62 percent of these total complaints about the Pan Am-Carnival operation were received in the first three months of the year, the period surrounding the bankruptcy filings and the cessation of scheduled operations. However, in the last six months of 1998, since the carrier's acquisition by PAL, we received only 26 complaints naming either Carnival or Pan Am; all but one of these concerned ticket refunds. For the first six months of 1999, we received 23 complaints, most of which dealt with problems with refunds and flight delays.

The Department's records indicate that, although Carnival had previously filed its Form 41 reports in a timely manner, by March 1998, both PAWA and Carnival had not filed their fourth-quarter 1997 reports and were also delinquent with respect to certain first-quarter 1998 reports. The carriers requested a waiver of the filing requirements on the grounds that they were in bankruptcy and lacked the resources and personnel to process the data required. In April 1998, the Department directed the carriers to file certain past-due reports but granted them a deferral on most of the documents until September 30. By October 30, 1998, all overdue reports had been filed, and Pan Am is now current on all of its reports. PAWA's reports ended with the first quarter of 1998 when it ceased all operations.

Another compliance disposition issue arose when it came to the Department's attention that four airports were complaining that PAWA and/or Carnival had failed to remit passenger facility charges ("PFCs") that they had collected from passengers and were obligated by law to forward to the respective airports. The four airports were: Palm Beach International Airport (seeking approximately \$40,000), Fort Lauderdale-Hollywood International Airport (\$125,000), Chicago/Midway Airport (\$21,300), and Orlando International Airport (\$14,100).

The Department regards the proper and timely remittance of PFCs to be a critical and ongoing legal obligation of the carrier. As was stated in the Department's recent order regarding another carrier: "[C]ontinued nonpayment of PFCs, despite our repeated warnings as to the consequences of such action, demonstrates a serious disregard for applicable Federal requirements."<sup>17</sup>

PAL initially maintained that these PFCs were pre-petition debts that were discharged through the bankruptcy reorganization process, and noted that the PFC obligations at issue here were largely, if not entirely, incurred by a predecessor management team. However, in subsequent discussions, we advised that, pursuant to statute, PFCs were to be collected and handled as trust funds, and such funds could not be considered as assets of the bankruptcy estate because the carrier had no legal or equitable title to the funds but only a possessory interest in them.<sup>18</sup> The Department further stated that the fiduciary obligation of a corporate entity for the proper handling of the trust funds is not altered by a change of officers or ownership.

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<sup>17</sup> Order 99-3-18 at 10.

<sup>18</sup> 49 U.S.C. 40117(g)(4); 14 CFR 158.49.



Thereafter, the carrier initiated and entered into compromise settlement agreements with each of the airports for the immediate remittance of PFCs. Given that action, we believe the carrier's earlier failure to arrange for remittance of the PFCs due should be more accurately attributed to a misunderstanding of legal requirements, rather than a deliberate effort to evade those requirements. We find that the carrier's action in entering into agreements for repayment of the PFCs demonstrates an appropriate response under the circumstances and manifests a satisfactory compliance disposition. We will, however, expect Pan Am to remain current in its future PFC obligations.

With respect to pending claims and legal actions, Carnival's filings with the bankruptcy court listed various unresolved actions, including a sex discrimination claim that was filed in February 1997 with the Equal Employment Opportunity Commission by a female pilot whom Carnival terminated for improperly removing documents from her personnel file. The carrier also acknowledged that it had been assessed fines that could reach \$50,000 for violations of customs and immigration laws. In addition, in April 1997, the U.S. Customs Service imposed a \$2.6 million civil penalty against Carnival as a result of the discovery and seizure of drugs on a Carnival flight. The carrier also stated that it had been engaged in a small number of legal actions in which plaintiffs were seeking damages totaling approximately \$3 million in connection with passenger injuries, passenger detainment by security personnel, lost cargo, and wrongful employee termination. Some of these claims were being handled by the carrier's insurance company.<sup>19</sup> Pan Am declared that it is not a party to these actions, has no information on their status, and believes that, by the bankruptcy court's confirmation of the plan of reorganization, the carrier was discharged of responsibility for these claims. We agree that these claims, all pre-petition, would have been subject to resolution through the plan of reorganization, and have verified that the Immigration and Customs objections to the plan were resolved in the bankruptcy process through stipulation. We want to emphasize, however, our concern that Pan Am remain in compliance with all laws and regulations of Federal agencies, including those involving customs and immigration, to which it is subject.

As to current legal matters, Pan Am claims that there are no outstanding judgments or pending litigation involving it or any of its owners or key personnel. Pan Am added, however, that a legal action was recently filed against the carrier by a tour operator, Wainwright's Vacations, LLC, in the District Court for the District of Maryland. Pan Am states that Wainwright's is seeking damages based on certain alleged conduct and remarks of a former Pan Am pilot. The carrier states that it has filed a counterclaim seeking to recover more than \$240,000 in payments owed to Pan Am by the tour operator for flights it performed under a charter contract.

We also inquired of the Federal Railroad Administration ("FRA") about the compliance disposition and safety record of the three railroads (Boston and Maine, Maine Central, and Springfield Terminal) that comprise the Guilford Railroad System and received a satisfactory evaluation.

In conclusion, it appears that Pan Am, under its new ownership, has demonstrated a satisfactory disposition to comply with all applicable legal requirements. The number of consumer complaints about Pan Am's operations has decreased significantly, and the carrier is current on its Form 41 filings. A dispute with several airports concerning the obligation of Pan Am for pre-bankruptcy PFC remittances was

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<sup>19</sup> Two other legal actions reported by Pan Am are the following: (1) *TIC Travel Industry Consultants, Inc. v. Agent Reporting Services Corporation d/b/a Agent Reporting Plan and American Air Lines, Inc., et al.* (Case No. 961122). TIC filed a complaint in the U.S. District Court in Puerto Rico claiming damages in excess of \$5 million for antitrust violations. The case had been stayed. (2) *ABC Communications Corporation v. Carnival Air Lines, Inc.* (Case No. 96-14964). ABC's complaint, filed in the Dade County Circuit Court, sought damages of \$30,600 for breach of contract. The case involved a telephone reservations system installed for Carnival by ABC, for which Carnival had refused to pay. Carnival filed a counterclaim seeking damages of \$2.6 million for lost revenues caused by the defective telephone system. The most recent status of the case was that it was in discovery.

resolved satisfactorily by settlement agreement. Moreover, the compliance and safety record of the Guilford Railroad System has been found to be satisfactory, and the FAA has not advised us of any reason why we should not find Pan Am fit for its proposed operations. Therefore, we conclude that Pan Am has a proper regard for the laws and regulations governing its services to ensure that its aircraft and personnel conform to applicable safety standards and that acceptable consumer relations practices will be followed.

### **CITIZENSHIP**

49 U.S.C. 41102 requires that certificates to engage in air transportation be held only by citizens of the United States as defined in 49 U.S.C. 40102(a)(15). That section specifies that the president and two-thirds of the board of directors and other managing officers be U.S. citizens and that at least 75 percent of the outstanding voting stock be owned and controlled by U.S. citizens. We have also interpreted the statute to mean that, as a factual matter, the carrier must actually be controlled by U.S. citizens.

Pan Am is a corporation organized under the laws of the State of Florida. It is wholly owned by PAC, a Florida corporation, which in turn is wholly owned by PAL, a Florida corporation whose stock is 99-percent owned by Messrs. Timothy Mellon and David A. Fink, both of whom are U.S. citizens. PAL has provided an affidavit attesting that it is a U.S. citizen, and that those owning at least 75 percent of its stock, its directors, and all of its and Pan Am's key personnel are U.S. citizens. We have found nothing in the record that would lead us to conclude that control of Pan Am is not with citizens of the United States.

In view of the foregoing, we conclude that Pan Am is a U.S. citizen and that it continues to be fit, willing, and able to provide interstate scheduled passenger service.

### **CONFIRMATION OF STAFF ACTION**

By this order, we also confirm the staff actions taken on February 27 and March 3, 1998, granting Pan Am a waiver of the 45-day advance notice requirement of 14 CFR 204.7 to the extent necessary to permit it to resume charter passenger operations as of February 28.

### **REISSUANCE OF CERTIFICATE AND CERTIFICATE LIMITATIONS**

In view of the stipulation in the acquisition agreement that PAC and Carnival will cease using the Carnival name and will seek to have that name removed from Carnival's air carrier authority, the applicants requested that Carnival's certificates be reissued in the name "Pan American Airways Corp." As discussed in our Notice dated October 7, 1997, confirming Carnival's registration of the new name as a trade name, all requirements of 14 CFR Part 215 governing the use and change of air carrier names have been met. Therefore, we are reissuing in the name "Pan American Airways Corp." the certificate issued to Carnival authorizing it to engage in interstate scheduled passenger air transportation.<sup>20</sup> The authority conveyed by the certificate to engage in charter air transportation operations is effective immediately; the authority to engage in scheduled air transportation operations will not become effective until the Department has received evidence that Pan Am has been authorized by the FAA to engage in such operations.

As stated above, our findings regarding Pan Am's fitness were based solely on our evaluation of its ability to conduct the scheduled operations proposed with up to eight B-727 aircraft. These findings might no longer apply if the company were to substantially change the scope or nature of its operations through the introduction of additional aircraft. Therefore, we are reissuing to Pan Am the interstate scheduled passenger certificate previously issued to Carnival with the added restriction that, should Pan Am propose

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<sup>20</sup> Pan Am has stated that it no longer desires to retain the trade name "Aero Puerto Rico," which it registered with the Department in 1996.

to acquire and operate more than eight B-727 aircraft, it must notify the Department in writing at least 45 days in advance and demonstrate its fitness for such expanded operations prior to placing into service any additional aircraft. Furthermore, should the carrier propose other substantial changes in its ownership, management, or operations, it must first comply with the requirements of section 204.5 of our rules.<sup>21</sup> The compliance of the company with this requirement is essential if we are to carry out our responsibilities under section 41110(e).

To aid the Department in its responsibility to monitor the fitness of new carriers, we have adopted a requirement that all start-up or newly constituted carriers must submit a detailed progress report, within 45 days following the end of the first year of actual flight operations, to the Air Carrier Fitness Division. In this case, we direct Pan Am to file such a report one year after it commences scheduled passenger operations. The report should include a description of the carrier's current operations (number and type of aircraft, principal markets served, total number of full-time and part-time employees), a summary of how its operations have changed during the year, a discussion of any changes it anticipates from its current operations during its second year, current financial statements,<sup>22</sup> and a listing of current senior management and key technical personnel. The carrier should also be prepared to meet with staff members of the Fitness Division to discuss its current and future operations.

#### **DISMISSAL OF APPLICATIONS FOR A *DE FACTO* TRANSFER, FOR A CERTIFICATE, AND FOR RENEWAL OF AN EXEMPTION**

Upon its acquisition of the stock of Carnival, PAC (the parent of PAWA), controlled two certificated carriers with international route authority. The Department has held that "[a] stock acquisition resulting in common control of two carriers having international route authority constitutes a *de facto* certificate transfer subject to section 401(h)."<sup>23</sup> Therefore, PAC and Carnival jointly filed an application in Docket OST-97-2787 seeking the Department's approval under section 41105 of the Statute of the *de facto* transfer of the economic authorities held by Carnival to Carnival under the ownership of PAC. However, with the complete cessation of air transportation operations by PAWA, the need for approval of a *de facto* transfer no longer exists, and, on January 6, 1999, the applicants filed a motion to dismiss their application in Docket OST-97-2787, which we are granting in this order.

PAWA filed an application in Docket OST-97-2918 for a certificate to engage in foreign scheduled air transportation between (1) New York and Miami, on the one hand, and Santo Domingo, Dominican Republic, on the other hand; and (2) Ft. Lauderdale, Miami, and New York, on the one hand, and Nassau, the Bahamas, on the other. With PAWA's cessation of all operations, it filed a motion on January 6, 1999, to dismiss its application in Docket OST-97-2918, which, in this order, we are granting.

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<sup>21</sup> Pan Am may contact our Air Carrier Fitness Division to report proposed substantial changes in its operations, ownership or management, and to determine what additional information, if any, will be required under section 204.5. If the carrier fails to file any of this information or if the information fails to demonstrate that the carrier will continue to be fit upon implementation of the substantial change, the Department may take such action as is appropriate, including enforcement action or steps to modify, suspend, or revoke the carrier's certificate authority. Moreover, by notice dated July 21, 1998, the Department requested air carriers to provide a 30-day advance notification of any proposed change in ownership, restructuring, or recapitalization.

<sup>22</sup> These financial statements should include a balance sheet as of the end of the company's first full year of actual flight operations and a twelve-month income statement ending that same date.

<sup>23</sup> Former section 401(h) of the Federal Aviation Act was recodified as section 41105 of the Statute. See, *Federal Express Corporation and The Flying Tiger Line, Inc.*, Order 89-3-21, p. 2, note 2. Also see, *AMR Eagle, Inc. and Executive Air Charter, Inc.*, Order 90-2-1, January 24, 1990; and *Texas Air-TWA Acquisition Case*, Order 85-8-25, August 9, 1985, pp. 5-6.

Pan Am filed a timely application in Docket OST-96-1166 for renewal of the exemption authority issued to Carnival by Order 97-6-26 to provide foreign scheduled passenger air transportation between Ft. Lauderdale and Caracas, Venezuela, although it did not seek renewal of its exemption authority to serve Haiti (Order 97-9-29). Pan Am states that it no longer has any plans to engage in foreign air transportation in the foreseeable future and has no objection to the termination of its foreign authority. Therefore, we will dismiss its application for renewal of the Caracas exemption and revoke that exemption and the exemption issued to Carnival by Order 97-9-29 to serve Port-au-Prince, Haiti.<sup>24</sup>

#### **REVOCATION OF PAWA CERTIFICATE FOR DORMANCY**

PAWA holds a certificate authorizing it to engage in interstate scheduled passenger air transportation (Order 96-10-33), and exemption authority to serve New York-Santo Domingo (Order 98-1-23).

PAWA ceased conducting all air transportation operations on February 4, 1998. We notified the carrier by letter dated February 25, 1998, that, in accordance with section 204.7 of our rules, its economic authority was automatically suspended as of February 4; that, before operations could be reinstituted, it must file a notice of intent to do so and have its fitness redetermined; and that, if its fitness had not been redetermined and it had not resumed operations by February 4, 1999, its certificate authority would be revoked for dormancy. On April 30, PAWA surrendered its FAA Certificate. Moreover, the reorganization plan approved by the bankruptcy court made provision for only one surviving air carrier, *i.e.*, Pan Am.

More than one year has now passed since PAWA ceased operations and, since it has expressed no intention of resuming air transportation operations, we are revoking its certificate for dormancy in accordance with the provisions of section 204.7. We are also revoking the exemption authority issued to PAWA by Order 98-1-23 authorizing it to serve New York-Santo Domingo, Dominican Republic.

#### **ACCORDINGLY,**

1. We find that Pan American Airways Corp. is fit, willing, and able to engage in interstate scheduled air transportation of persons, property, and mail.
2. We reissue in the name Pan American Airways Corp. the certificate issued to Carnival Air Lines, Inc., authorizing it to engage in scheduled interstate air transportation of persons, property, and mail (Order 90-12-38) in the form and subject to the Terms, Conditions, and Limitations attached.
3. We direct that, should Pan American Airways Corp. propose to utilize more than eight aircraft in its air transportation operations, it must notify the Department in writing at least 45 days in advance and demonstrate its fitness for such operations prior to placing the additional aircraft into service.
4. We direct Pan American Airways Corp. to submit to the Air Carrier Fitness Division a first-year progress report within 45 days of the end of its first year of scheduled passenger operations under its new ownership.
5. We revoke, in accordance with the dormancy provisions of 14 CFR 204.7, the certificate issued to Pan American World Airways, Inc., by Order 96-10-33 authorizing it to engage in interstate scheduled passenger air transportation and the authority issued to it by exemption (Order 98-1-23) to serve New York, New York-Santo Domingo, Dominican Republic.

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<sup>24</sup> In addition, we will revoke Carnival's foreign scheduled certificate authority for Route 574 (the Bahamas, the Dominican Republic and Guyana) without prejudice. However, since the revocation of foreign certificate authority requires Presidential review under section 41307 of the Statute, this matter will be handled in a separate order.

6. We confirm the staff oral actions taken on February 27 and March 3, 1998, granting Carnival Air Lines, Inc., a waiver of the 45-day advance notice provisions of section 204.7 to the extent necessary to permit it to engage in charter air transportation operations beginning February 28, 1998.

7. We dismiss the joint application of Pan American Corporation and Carnival Air Lines, Inc., in Docket OST-97-2787 for approval under 49 U.S.C. 41105 of the *de facto* transfer of the certificate and other economic authorities held by Carnival Air Lines, Inc., to Carnival under the ownership of Pan American Corporation.

8. We dismiss the application of Pan American World Airways, Inc., in Docket OST-97-2918 for a certificate to engage in foreign scheduled air transportation of persons, property, and mail between New York and Miami, on the one hand, and Santo Domingo, on the other; and between Ft. Lauderdale, Miami and New York, on the one hand, and Nassau, the Bahamas, on the other.

9. We dismiss the application of Pan American Airways Corp. in Docket OST-96-1166 for renewal of the exemption from 49 U.S.C. 41101 granted to Carnival Air Lines, Inc., by Order 97-6-26 to provide foreign scheduled air transportation between Ft. Lauderdale, Florida, and Caracas, Venezuela, and revoke that exemption and the exemption granted to Carnival by Order 97-9-29 to operate to Port-au-Prince, Haiti.

10. We dismiss the motions of Mr. Richard C. Bartel, Pan American Corporation and Carnival Air Lines, Inc., to file otherwise unauthorized documents in Docket OST 97-2787.

11. We grant the motions of Pan American Airways Corp. and Mr. Richard C. Bartel for leave to file unauthorized documents in Docket OST-99-5945.

12. We reserve the right to amend, modify, or revoke this order at any time without a hearing.

13. We will serve a copy of this order on the persons listed in Attachment A.

By:

**A. BRADLEY MIMS**

Acting Assistant Secretary for Aviation  
and International Affairs

(SEAL)



# **Certificate of Public Convenience and Necessity for Interstate Air Transportation**

*(as reissued)*

*This Certifies That*

**PAN AMERICAN AIRWAYS CORP.**

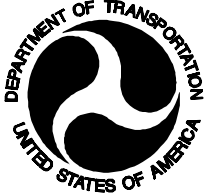
*is authorized, subject to the provisions of Subtitle VII of Title 49 of United States Code, the orders, rules, and regulations issued thereunder, and the attached Terms, Conditions, and Limitations, to engage in interstate air transportation of persons, property, and mail.*

*This Certificate is not transferable without the approval of the Department of Transportation.*

*By Direction of the Secretary*

*Issued by Order 99-8-15  
On August 19, 1999  
Aviation  
Effective on (see attached)*

*A. Bradley Mims  
Acting Assistant Secretary for  
and International Affairs*



## *Terms, Conditions, and Limitations*

**PAN AMERICAN AIRWAYS CORP.**

*is authorized to engage in interstate air transportation of persons, property, and mail between any point in any State, territory, or possession of the United States or the District of Columbia, and any other point in any of those entities.*

*This authority is subject to the following provisions:*

- (1) The authority to engage in charter air transportation operations is effective immediately. The authority to engage in scheduled air transportation operations will not become effective until the Department has received a copy of the holder's Operations Specifications authorizing such operations from the Federal Aviation Administration (FAA); provided, however, that the Department may stay the effectiveness of this authority at any time prior to that date.*
- (2) Pending receipt of effective scheduled authority, the holder may not accept payment of any kind (i.e., cash, check, or credit card) or issue tickets for the scheduled operations proposed under this certificate, and any advertisement or listing of flights by the holder must prominently state: "This service is subject to receipt of government operating authority."*
- (3) The holder shall at all times conduct its operations in accordance with the regulations prescribed by the Department of Transportation for the services authorized by this certificate, and with such other reasonable terms, conditions, and limitations as the Department of Transportation may prescribe in the public interest.*
- (4) The holder's authority is effective only to the extent that such operations are also authorized by the FAA.*

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*\*This certificate is being reissued to reflect the change in the name of the holder from Carnival Air Lines, Inc., to Pan American Airways Corp. and a restriction on the conduct of scheduled operations.*

(5) *The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. 40102(a)(15).*

(6) *The holder shall maintain in effect liability insurance coverage as required under 14 CFR Part 205. Failure to maintain such insurance coverage will render a certificate ineffective, and this or other failure to comply with the provisions of Subtitle VII of Title 49 of the United States Code or the Department's regulations shall be sufficient grounds to revoke this certificate.*

(7) *In the event that the holder receives effective scheduled passenger authority, the following additional conditions will apply:*

(a) *The holder may reduce or terminate service at any point or between any two points, subject to compliance with the provisions of 49 U.S.C. 41734 and all orders and regulations issued by the Department of Transportation under that section.*

(b) *The holder may not provide scheduled passenger air transportation to or from Dallas (Love Field), Texas, except within the limits set forth in section 29 of the International Air Transportation Competition Act of 1979, as amended by section 337 of the Department of Transportation and Related Agencies Appropriations Act, 1998.*

(8) *Should the holder propose any substantial changes in its ownership, management, or operations (as that term is defined in 14 CFR 204.2(n)), it must first comply with the requirements of 14 CFR 204.5.*

(9) *In the event that the holder ceases all operations for which it was found "fit, willing, and able," its authority under all certificates held shall be suspended under the terms of 14 CFR 204.7 and the holder may neither recommence nor advertise such operations unless its fitness to do so has been redetermined by the Department. Moreover, if the holder does not resume operations within one year of its cessation, its authority shall be revoked for dormancy.*



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